

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Robert G. Taub

Miller Post Office
Miller, Nebraska

Docket No. A2012-73

ORDER AFFIRMING DETERMINATION

(Issued March 2, 2012)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012.”¹ The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly,

¹ United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, at 1 (Notice).

the Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

The Postal Service’s Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service’s request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On November 16, 2011, Teresa Saathoff (Petitioner) filed a petition with the Commission seeking review of the Postal Service’s Final Determination to close the Miller, Nebraska post office (Miller post office).² The Final Determination to close the Miller post office is affirmed.³

II. PROCEDURAL HISTORY

On December 1, 2011, the Commission established Docket No. A2012-73 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.⁴

On December 1, 2011, the Postal Service filed the Administrative Record with the Commission.⁵ The Postal Service also filed comments requesting that the Commission affirm its Final Determination.⁶

² Petition for Review received from Teresa Saathoff regarding the Miller, Nebraska post office 68858, November 16, 2011 (Petition).

³ The Commission is divided equally, 2-2, on the outcome of this appeal. In the absence of a majority, the Final Determination stands.

⁴ Order No. 1017, Notice and Order Accepting Appeal and Establishing Procedural Schedule, December 1, 2011.

⁵ The Administrative Record is attached to the United States Postal Service Notice of Filing, December 1, 2011 (Administrative Record). The Administrative Record includes, as Item No. 47, the Final Determination to Close the Miller, Nebraska Post Office and Extend Service by Rural Route Service (Final Determination).

⁶ United States Postal Service Comments Regarding Appeal, January 10, 2012 (Postal Service Comments).

Petitioner filed a participant statement supporting her Petition.⁷ On January 30, 2012, the Public Representative filed comments.⁸

III. BACKGROUND

The Miller post office provides retail postal services and service to 62 post office box customers. Final Determination at 2. In addition, 75 delivery customers are served through this office. The Miller post office, an EAS-55 level facility, provides retail service from 9:45 a.m. to 2:30 p.m., Monday through Friday, and 9:45 a.m. to 11:15 p.m. on Saturday. Lobby access hours are 24 hours a day Monday through Saturday. *Id.*

The postmaster position became vacant on March 20, 2003, when the Miller postmaster retired. A non-career officer-in-charge (OIC) was installed to operate the office. *Id.* at 2, 12. Retail transactions average six transactions daily (6 minutes of retail workload). *Id.* at 2. Post office receipts for the last 3 years were \$15,041 in FY 2008; \$14,068 in FY 2009; and \$10,277 in FY 2010. There are no permit or postage meter customers. *Id.* By closing this office, the Postal Service anticipates savings of \$35,585 annually. *Id.* at 13.

After the closure, retail services will be provided by the Amherst post office located approximately 9 miles away.⁹ Delivery service will be provided by rural route service through the Amherst post office. *Id.* at 2. The Amherst post office is an EAS-13 level office, with retail hours of 7:30 a.m. to 11:30 a.m. and 1:00 p.m. to 3:45 p.m., Monday through Friday, and 7:30 a.m. to 9:00 a.m. on Saturday. *Id.* There are 22 post office boxes available. *Id.*

⁷ Participant Statement received from Teresa Saathoff, December 23, 2011 (Participant Statement).

⁸ Public Representative Comments Supporting Remand, January 30, 2012 (PR Comments). The Public Representative submitted an accompanying Motion of Public Representative for Late Acceptance of Comments. The Motion is granted.

⁹ *Id.* at 2. MapQuest estimates the driving distance between the Miller and Amherst post offices to be approximately 9.56 miles (18 minutes driving time).

Retail service is also available at the Sumner post office located 7 miles away.¹⁰ The Sumner post office is an EAS-11 level office, with retail hours of 8:15 a.m. to 12:30 p.m. and 1:30 p.m. to 4:15 p.m. Monday through Friday and 8:30 a.m. to 9:30 a.m. on Saturday. There are 46 post office boxes available at the Sumner post office. The Postal Service will continue to use the Miller name and ZIP Code. *Id.* at 7, Concern No. 22.

IV. PARTICIPANT PLEADINGS

Petitioner. Petitioner opposes the closure of the Miller post office. She expresses concerns about the effect on the community and effective and regular service. She objects to the closing in view of the provision in the Postal Reorganization Act that calls for the Postal Service to provide a maximum degree of effective and regular postal services to rural areas, communities and small towns where the post office is not self-sustaining. Petition at 1; Participant Statement at 2-3.

Postal Service. The Postal Service argues that the Commission should affirm its determination to close the Miller post office. Postal Service Comments at 2. The Postal Service believes the appeal raises two main issues: (1) the effect on postal services; and (2) the economic savings expected to result from discontinuing the Miller post office. *Id.* at 1. The Postal Service asserts that it has given these and other statutory issues serious consideration and concludes that the determination to discontinue the Miller post office should be affirmed. *Id.* at 1-2.

The Postal Service explains that its decision to close the Miller post office was based on several factors, including:

- the postmaster vacancy;
- a minimal workload and declining office revenue;

¹⁰ *Id.* at 2. MapQuest estimates the driving distance between the Miller and Sumner post offices to be approximately 6.52 miles (12 minutes driving time).

- a variety of other delivery and retail options (including the convenience of rural delivery and retail service);
- very little recent growth in the area;
- minimal impact on the community; and
- expected financial savings.

Id. at 4. The Postal Service contends that it will continue to provide regular and effective postal services to the Miller community when the Final Determination is implemented. *Id.* at 4-5.

The Postal Service also asserts that it has followed all statutorily required procedures and has addressed the concerns raised by Petitioner regarding the effect on postal services, the effect on the Miller community, economic savings, and the effect on postal employees. *Id.* at 5-11.

Public Representative. The Public Representative concludes the Postal Service followed applicable procedures. PR Comments at 1. However, he contends the decision to close the Miller post office is arbitrary and capricious and unsupported by substantial evidence. *Id.* In particular, he questions whether a sufficient number of post office boxes will be available to accommodate demand from the Miller post office box customers. *Id.*

V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal

Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

A. Notice to Customers

Section 404(d)(1) requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. The Postal Service may not take any action to close a post office until 60 days after its determination is made available to persons served by that post office. 39 U.S.C. § 404(d)(4). A decision to close a post office may be appealed within 30 days after the determination is made available to persons served by the post office. *Id.* § 404(d)(5).

The record indicates the Postal Service took the following steps in providing notice of its intent to close. On June 6, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in service at the Miller post office. Final Determination at 2. A total of 137 questionnaires were distributed to delivery customers. Other questionnaires were made available at the retail counter. A total of 53 questionnaires were returned. On June 16, 2011, the Postal Service held a community meeting at the Miller Community Building to address customer concerns. Fifty-four (54) customers attended. *Id.*

The Postal Service posted the proposal to close the Miller post office with an invitation for comments at the Miller, Amherst, and Sumner post offices from July 26, 2011 through September 26, 2011. *Id.* The Final Determination was posted at the same three post offices from November 3, 2011 through December 5, 2011. Administrative Record, Item No. 49.

The Postal Service has satisfied the notice requirements of 39 U.S.C. § 404(d).

B. Other Statutory Considerations

In making a determination on whether or not to close a post office, the Postal Service must consider the following factors: the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal service will be provided; and the economic savings to the Postal Service. 39 U.S.C.

§ 404(d)(2)(A). The Postal Service must also comply with the provisions of 39 U.S.C. § 101(b), which prohibits closing any small post office solely for operating at a deficit.

Effect on the community. Miller, Nebraska is an unincorporated community located in Buffalo County, Nebraska. Administrative Record, Item No. 16. The community is administered politically by the Village Board. Police protection is provided by the Buffalo County Sheriff. Fire protection is provided by the Volunteer Fire Department. The community is comprised of farmers and those who work in local businesses or commute to work in nearby communities. *Id.* Residents may travel to nearby communities for other supplies and services. *See generally* Administrative Record, Item No. 22 (returned customer questionnaires and Postal Service response letters).

As a general matter, the Postal Service solicits input from the community by distributing questionnaires to customers and holding a community meeting. The Postal Service met with members of the Miller community and solicited input from the community with questionnaires. In response to the Postal Service's proposal to close the Miller post office, customers raised concerns regarding the effect of the closure on the community. Their concerns and the Postal Service's responses are summarized in the Final Determination. Final Determination at 8-12.

Petitioner argues that closing the Miller post office will adversely affect the Miller community. Participant Statement 3. The Postal Service responds that communities generally require regular and effective postal services and those will continue to be provided to the Miller community. Postal Service Comments at 9. In addition, the Postal Service states it is helping to preserve the community identity by continuing to use the Miller post office name and ZIP code in addresses. *Id.*

The Postal Service has adequately considered the effect of the post office closing on the community as required by 39 U.S.C. § 404(d)(2)(A)(i).

Effect on employees. The Postal Service states that the Miller postmaster retired on March 20, 2003, and that an OIC has operated the Miller post office since then. Final Determination at 2, 12. It asserts that after the Final Determination is implemented, the temporary OIC may be separated and that no other Postal Service employee will be adversely affected. *Id.*

The Postal Service has considered the possible effects of the post office closing on the OIC and has satisfied its obligation to consider the effect of the closing on employees at the Miller post office as required by 39 U.S.C. § 404(d)(2)(A)(ii).

Effective and regular service. The Postal Service contends that it has considered the effect the closing will have on postal services provided to Miller customers. Postal Service Comments at 5. It asserts that customers of the closed Miller post office may obtain retail services at the Amherst post office located 9 miles away. Final Determination at 2. Delivery service will be provided by rural carrier route service through the Amherst post office. *Id.* The Miller post office box customers may obtain Post Office Box Service at the Amherst post office, which has 22 boxes available. *Id.* Miller post office box customers may also obtain Post Office Box Service at the Sumner post office, located 7 miles away, which has 46 boxes available. *Id.*

For customers choosing not to travel to the Amherst post office, the Postal Service explains that retail services will be available from the carrier. Postal Service Comments at 5. The Postal Service adds that carrier service is beneficial to many senior citizens and those who face special challenges because they do not have to travel to the post office for services. *Id.* at 7.

Petitioner expresses concerns about the sanctity of the mail and inconveniences in obtaining postal services from the rural carrier. *Id.* She explains that her veterinarian business mails animal tissue samples late in the day so they can be received as fresh as possible. *Id.* She contends carrier service would not be acceptable for mailing these samples, nor is it cost effective or convenient for the business to drive to another post

office to mail these samples. *Id.* She states that, based on her understanding, the blue box in front of the Miller post office will be removed, which eliminates another option to mail items later in the day. Petition at 1; Participant Statement at 2.

The Postal Service responds that the Buffalo County Sheriff reported no recent or significant mail theft or vandalism. It argues that concerns about mailing animal tissue samples were considered in the Administrative Record. The Postal Service notes that Petitioner stated in her questionnaire that she mails parcels and uses Express Mail service on a weekly basis. It confirms the collection box located at the Miller post office will be retained, and mail will continue be picked up Monday through Saturday. Postal Service Comments at 6.

The Public Representative argues that the number of available post office boxes is insufficient to accommodate demand from Miller post office box customers. He concedes that, between them, the Amherst and Sumner post offices can accommodate demand. However, he notes that the Sumner post office is on the Retail Access Optimization Initiative (RAOI) list and contends that it will likely close after the current moratorium on post office closings expires. PR Comments at 1.

The Public Representative observes that that the Sumner post office appeared on the RAOI list 1 day after the Miller post office proposal to close was posted. He also notes that the Postal Service posted the Final Determination to close the Miller post office 1 month after posting the proposal to close the Sumner post office. He concludes that the Postal Service knew the Sumner post office would not be available to accommodate Miller post office box customers. He states that the next closest post office is located in Elm Creek 15.1 miles away, but argues the Postal Service has not considered whether it could provide effective service to the Miller customers from that distance. *Id.* at 2.

The Postal Service argues that the Sumner post office's inclusion on the RAOI list has no impact on this appeal. It argues that 39 U.S.C. § 404(d) limits the Commission's review to facts contained in the Administrative Record. It notes that there has been no change yet in operations at the Sumner post office and that the impact of

the closing on Miller residents would be considered if the discontinuance study advances further. Postal Service Comments at 3 n.7.

A sufficient number of post office boxes will be available at the Amherst and Sumner post offices. Moreover, the Postal Service advised the Commission that it will delay closing or consolidating any post office until May 15, 2012. See n.1, *supra*. If the Sumner post office discontinuance proposal subsequently proceeds, patrons would have the same appeal process available to them to review the Postal Service's compliance with the required statutory factors. And, if the Sumner post office ultimately closes, the Postal Service should ensure that an adequate number of post office boxes will be available at nearby post offices to meet demand.¹¹

The Postal Service has considered the issues raised by customers concerning effective and regular service as required by 39 U.S.C. § 404(d)(2)(A)(iii).

Economic savings. The Postal Service estimates total annual savings of \$35,585. Final Determination at 13. It derives this figure by summing the following costs: postmaster salary and benefits (\$45,433) and annual lease costs (\$0), minus the cost of replacement service (\$9,848). *Id.*

The Miller post office postmaster retired on March 20, 2003. Final Determination at 2, 12. The post office has since been staffed by a non-career OIC who, upon discontinuance of the post office, may be separated from the Postal Service. The postmaster position and the corresponding salary will be eliminated. See, e.g., Docket No. A2011-67, United States Postal Service Comments Regarding Appeal, October 24, 2011, at 13; Docket No. A2011-68, United States Postal Service Comments Regarding Appeal, November 2, 2011, at 10. Furthermore, notwithstanding that the Miller post office has been staffed by an OIC for approximately 9 years, even assuming the use of the presumably lower OIC salary, the Postal Service would have satisfied the requirements of section 404(d)(2)(A)(iv).

¹¹ See, e.g., Docket No. A2012-51, Order No. 1226, Order Affirming Determination, February 14, 2012, at 9; Docket No. A2012-2, Order No. 1167, Order Affirming Determination, January 24, 2012, at 9-10; Docket No. A2011-98, Order No. 1137, Order Affirming Determination, January 17, 2012, at 10.

The Postal Service has satisfied the requirement that it consider economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

Section 101(b). Section 101(b) prohibits closing any small post office solely for operating at a deficit. Petitioner alleges that the Postal Service is closing the Miller post office solely for economic reasons. Petition at 1.

The Commission does recognize that economics may play a role in the Postal Service's decision. However, the Commission is not prepared to conclude that the Postal Service's determination violates section 101(b). In addition to considering workload at the Miller post office (revenues declining and averaging only six retail transactions per day), the Postal Service took into account other factors such as the postmaster vacancy, the minimal impact on the community, and expected financial savings. In addition, it considered the alternate delivery and retail options available to customers. Final Determination at 14.

The Postal Service did not violate the prohibition in section 101(b) on closing the Miller post office solely for operating at a deficit.

VI. CONCLUSION

The Postal Service has adequately consider the requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to close the Miller post office is affirmed.¹²

¹² See note 3, *supra*.

It is ordered:

The Postal Service's determination to close the Miller, Nebraska post office is affirmed.

By the Commission.

Ruth Ann Abrams
Acting Secretary

DISSENTING OPINION OF CHAIRMAN GOLDWAY

The Miller post office provides service to 62 post office box customers, yet the administrative receiving office in Amherst has only 22 post office boxes available. This is an insufficient number. The Postal Service identifies the Sumner post office with 46 boxes available as an alternative service location. However, the Sumner post office is undergoing review for closure, and the Postal Service has publicly posted a proposal to close that office. Those boxes at Sumner do not offer a reasonable assurance of remaining in use.

A major advantage of having a post office box is the stability of the mailing address. It is common for customers to maintain their post office boxes for many years, and to distribute the box address to everyone with whom they communicate. Customers have no wish to change their mailing address unnecessarily. To obtain a box address in a retail location that faced the strong possibility of elimination in the near future would, in many cases, frustrate a customer's purpose of having a post office box.

The Commission has often expressed a concern -- and I have consistently expressed the concern -- that the maintenance of adequate service requires providing an adequate number of post boxes in the receiving facility. This record does not show that the Postal Service has sufficiently considered the issues raised by customers concerning the provision of effective and regular service as required by 39 U.S.C. § 404(d)(2)(A)(iii).

The Administrative Record is inaccurate with regard to economic savings. As such, the Postal Service has not adequately considered economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

The Postal Service argues that savings should be calculated based on a full-time postmaster's salary. Yet the Miller post office has been operated by a non-career officer-in-charge (OIC) since the former postmaster retired on March 20, 2003. On the

one hand, the Postal Service argues that the effect on employees of this closing will be minimal because only an OIC will be eliminated; yet on the other hand, it argues that the savings should be calculated using a full-time postmaster position.

A non-career OIC has been in place for nearly nine years. Given this extended period of time, and the Postal Service's current financial difficulties, it is clear that the Postal Service has no obligation to maintain a full-time postmaster in small facilities such as Miller. Upon closure of the facility, the Postal Service may, at most, avoid continuing to pay the OIC level salary.

The Postal Service already claims billions of dollars in savings from reducing labor costs. I believe the savings from substituting OICs in postmaster positions throughout the nation have already been included in those billions. There are inherent and blatant contradictions in the Administrative Record that must be corrected on remand.

It is not the statutory responsibility of the Commission to correct the Administrative Record for the Postal Service and certainly not to make its own surmise about what and/or whether there would be savings if accurate data were in the Administrative Record. Therefore, the decision to close should be remanded to the Postal Service to correct the Administrative Record and present a more considered evaluation of potential savings.

Moreover, the Postal Service recently announced a moratorium on post office closings. It is confusing and perhaps unfair to require some citizens whose post offices have received a discontinuance notice as of December 12, 2011 to gather evidence and pursue an appeal to the Commission, while others whose post offices were in the review process, but had not yet received a discontinuance notice by December 12, 2011, have the respite of a 5-month moratorium and the opportunity to have further consideration of alternatives by the Postal Service.

The citizens of Miller, Nebraska and their concerns regarding the loss of a neighborhood post office should be afforded the same opportunity to be heard and considered as the citizens of the approximately 3,700 post offices fully covered by the moratorium.

Ruth Y. Goldway

DISSENTING OPINION OF VICE CHAIRMAN LANGLEY

The Postal Service did not adequately consider the economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv). The Postal Service should take into consideration that a non-career postmaster relief (PMR) has been in charge of this facility for nearly 9 years, since March 2003, not an EAS-55 postmaster, and reflect the PMR's salary and benefits in its cost savings analysis. As a government entity, the Postal Service should ensure that its cost/benefit analysis accurately identifies capturable cost savings and does not overstate savings.

In addition, the Postal Service did not adequately consider the effects on the community and whether the closing is consistent with the Postal Service's provision of "a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post office are not self-sustaining" as required by 39 U.S.C. § 404(d)(2)(A)(i) and (iii). The Final Determination indicates that the Miller post office has 62 post office box holders, while the proposed administrative office, the Amherst post office, has 22 post office boxes available and the Sumner post office, an alternate office, has 46 post office boxes available. Final Determination at 2.

Although there may be a sufficient number of post office boxes available at the Amherst and Sumner post offices combined to accommodate the Miller post office box holders, the Sumner post office is being considered for discontinuance under the Retail Access Optimization Initiative (RAOI). While no change in operations has been made for the Sumner post office, Miller post office box holders may want to prevent having to go through another discontinuance process and rent a box from the Amherst post office. Should all the Miller post office box holders rent boxes at the Amherst post office, there would be a shortage of 40 post office boxes. The Postal Service should include within its discontinuance process a mechanism to ensure that due consideration is given to the impact on the community of a substitute service post office immediately being reviewed for discontinuance.

I find that the Administrative Record evidence does not support the Postal Service's decision to discontinue operations at the Miller post office and should be remanded.

Nanci E. Langley